

**MINUTES OF A SPECIAL MEETING
CITY COMMISSION
FORT LAUDERDALE, FLORIDA
JANUARY 30, 2002**

Meeting was called to order at 4:00 P.M. by Mayor Naugle on the above date, on a bus bound for the *Wingate Landfill and Incinerator Site*.

Roll call showed:

Present:	Commissioner Tim Smith Commissioner Carlton B. Moore Commissioner Cindi Hutchinson Commissioner Gloria F. Katz Mayor Jim Naugle
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Absent:	None
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Also Present:

City Manager	F. T. Johnson
City Attorney	Dennis E. Lyles
City Clerk	Lucy Masliah

Upon arrival in the vicinity, the City Commission viewed the site from various angles and Mr. Greg Kisela, Assistant City Manager, described the site and mentioned the possibility of Brownfield funding sources for acquisition. During the tour, Commissioner Moore pointed out nearby residential areas and felt the purchase of open green space in the neighborhood should be pursued.

At approximately 4:25 P.M., the Commission headed back to City Hall. Along the way, Commissioner Moore pointed out a warehouse at Sunrise Boulevard and Northwest 17th Avenue, which was located right next to residential uses. He noted that the same situation existed on Northwest 1st Avenue.

Mayor Naugle advised that he had received a nice e-mail from Marsha Goldsby about the litter being cleared from the bus stop on Northwest 7th Avenue. He stated that he had similar problems at his own property and had to clean up around the bus stop trash can every day. Mayor Naugle also expressed concern about the grocery store site at Sistrunk Boulevard and Northwest 6th and 7th Avenues.

Mayor Naugle pointed out that a large diesel fuel tank had been installed at the Substation adjacent to the Regal Trace development. Commissioner Moore understood diesel fuel did not explode. Before arriving at City Hall, Mayor Naugle inquired about the status of the new fire station, and Mr. Kisela reported that it was coming along, but much slower than expected.

At 4:42 P.M., the bus arrived at City Hall, and the meeting was recessed. It was reconvened at 4:53 P.M.

Wingate Landfill and Incinerator Site – Nonpayment of Subcontractors – IT Group

The City Manager believed his Memorandum No. 02-174, dated January 29, 2002, had been comprehensive about IT Corporation having filed a Chapter 11 bankruptcy petition and where that put the City in terms of paying the various creditors associated with the project. He noted that Mr. Kisela had been spearheading this effort, and he had asked that he provide an update.

Mr. Kisela said that the IT Corporation had filed for bankruptcy on January 16, 2002 and, up until that time, there had been difficulties paying vendors and subcontractors so the City had started paying them directly, with consent, in the amount of approximately \$207,000. He advised that except for the fence at the southern end of the site and completion of the as-builts by the surveyor, the project was complete. Mr. Kisela stated that there had been a final "walk through" with representatives of the State and the U.S. Environmental Protection Agency on Monday. He added that there were some remaining punch list items.

Mr. Kisela reported that the contractor was working with the surveyor and the fencing company to complete the remaining components, and a list had been distributed to the Commission of about \$1 million owed to the identified subcontractors. He was not sure, however, if the list was comprehensive, but it was staff's best estimate based on the information available. Mr. Kisela explained that the IT Corporation might contest some of the amounts.

Mayor Naugle noted that some of the listed companies did not have dollar amounts listed. Mr. Kisela explained if the subcontractors had not provided any notice of non-payment, staff was assuming they were not owed any money. He stated that the bankruptcy made things difficult and, up until January 16, 2001, IT Corporation had consented to the direct payment of the subcontractors. Mr. Kisela explained that the City had not had a direct contract with the IT Corporation. Rather, the agreement involved the cooperative parties and IT Corporation.

Mayor Naugle inquired about the three cooperative parties. Mr. Kisela replied they were a representative of Waste Management, an Attorney for the Cooperative Parties, and himself on behalf of the City. He explained that the decisions of the Technical Advisory Committee required unanimous consent. Mr. Kisela said that when the project had been started in the summer of 2000, the IT Corporation had provided a payment and performance bond to ensure subcontractors received payment. Commissioner Smith inquired as to the amount of the bond, and he was advised it was in the amount of \$4.88 million.

Mr. Kisela reported that the cooperative parties had some preliminary discussions with the bonding agent, who had expressed a willingness to cooperate and expedite. He anticipated that claims would be filed and the issues worked through over the next 30 to 60 days. He advised that Kemper was the bonding agent.

Mr. Kisela stated that IT Corporation had filed bankruptcy in federal court in Delaware, and there was a tentative purchaser so the company could be reorganized. It was his understanding that the IT Corporation did not have the ability to pay any of the pre-petition claims, which amounted to about \$1 million.

The City Manager noted that in addition to the bond, the City had retained a certain amount of money. Mr. Kisela explained that under the contract, the City had been allowed to disburse up to the retained amount, and that amount had been pretty much exhausted.

Mr. Greg Martin, Metro Truck & Company, stated that IT Corporation owed him \$282,000 for this project. He stated that he had participated as a Disadvantaged Business Enterprise (DBE), and he had been promised payment within 45 days. Mr. Martin stated that his company was now on the verge of bankruptcy.

Commissioner Moore thanked the Commission for calling this special meeting. He noted that the reason had been because of the very negative impact of this situation on local business people like Mr. Martin. He understood the rights of IT Corporation as described in the back-up material, and it was important to have that information. However, he was more concerned about the list of businesses that were being immediately impacted while IT Corporation sought a buyer or reorganization. Commissioner Moore pointed out that the City had encouraged the use of minority and disadvantaged business in this project, and he felt the City had a responsibility.

Commissioner Moore stated that the "X" on the list of businesses indicated they were ready to "step in line" for payment, so those without the X were not in line. He noted that there was also a bond and, again, companies with legal counsel and know-how had filed for payment against the bond. However, other companies were in debt because of the situation, with Metro Trucking being in the greatest debt at \$282,000, and another small business that was owed \$165,000.

Commissioner Smith inquired about the companies that were listed without dollar amounts. Mr. Kisela stated that he did not think they were owed money at this point. Commissioner Moore pointed out that there was a \$4.8 million bond with a 30- to 60-day turnaround period. Mr. Kisela agreed that was correct. Commissioner Moore understood the City had also retained \$250,000. Commissioner Smith believed IT Corporation could attempt to attach that \$250,000. Commissioner Moore thought that even if such a claim were made, the bond money would be available by the time it were resolved.

Ms. Denise Cobb, President of Second Chance, did not know the City was in the business of paying creditors. She did not want to see anyone go out of business, but she did not want to go out of business herself, and her concern was Wingate.

Commissioner Moore wanted to use the \$250,000 retainage to divide among the business that had not been paid. He pointed out that they would go out of business because they were too small to be able to wait a long time for payment. He hoped the Commission would be willing to take this risk and then seek assistance from the bonding company.

Mayor Naugle asked for the City Attorney's opinion on that idea. The City Attorney explained that if the City paid the subcontractors directly, having been notified of the bankruptcy proceedings, it would be at substantial risk of paying those amounts twice. He stated that the \$250,000 retainage was also subject to the bankruptcy proceedings, unlike the bond. The City Attorney advised that the City might also be at risk of being held in contempt of the bankruptcy court. He explained that claims could be made against the surety bond and payments made directly to the subcontractors as quickly as they could be processed, and that was not impacted by the bankruptcy proceedings.

Mayor Naugle asked if City staff could assist the companies involved in filing claims. The City Attorney replied that was already being done. He explained that it was the creditors' rights for which protection was sought in a bankruptcy, and staff wanted to help those involved in this project within the constraints of the law. The City Attorney stated that the companies did not need counsel to file bond claims.

Mayor Naugle suggested that the vendors be supplied with letters in this regard that they could share with their creditors indicating that there was a performance bond, and they should be paid within some time period. The City Attorney replied that could be done, and staff was also asking the bankruptcy court in Delaware to permit these payments as soon as possible.

Commissioner Moore was glad all of those things were being done, but the "missing link" was the survivability of the businesses while the City went through the processes involved. If staff was confident Kemper would make the payments within 30 to 60 days, he thought it would be appropriate for the City to make the payments and then collect it from the bonding company later. Commissioner Moore wanted to ensure those most impacted by this would stay afloat in the meantime.

Mayor Naugle understood the City would be held in contempt of court if that step were taken. Commissioner Moore did not think the City could be held in contempt because it would not be holding back anyone's money because the bond would repay it before all the other processes were concluded. Commissioner Smith understood the City Attorney to have indicated that the City had to wait for the bankruptcy process, or it could end up paying twice. He advised that he had been "stung" by a bankruptcy some years ago, so he had a lot of sympathy, but he felt the Commission should follow the City Attorney's advice. Commissioner Moore wondered by Mr. Martin had not filed a claim against the bond. Mr. Martin said he had done so, but the bonding company was "dragging its feet."

Commissioner Smith suggested that a decision be delayed until the February 5, 2002 meeting. At that time, if any of the companies involved could not meet their payrolls, etc., he would be willing to consider a bit of a contingency to hold them over if they were at risk of folding.

The City Attorney wished to clarify that the earlier discussion had related to direct payment of the subcontractors, which would have been a circumvention of the bankruptcy court. The subsequent discussion, however, appeared to involve a loan from the City to be repaid by the bond. He thought there might be a way to do a loan, if it met the test of serving a public purpose. He stated that the risk in that case would be an inability to recoup the money, but the City would not be held in contempt. Mayor Naugle added that if the City made loans, and those companies subsequently filed bankruptcy, there would be a risk.

Commissioner Smith thought it would be reasonable to wait until February 5, 2002 to determine what it would really take to keep the subcontractors afloat. Mayor Naugle did not want to give anyone false hope. Commissioner Katz agreed. Mayor Naugle wondered if staff knew if the IT Corporation had accepted the work performed. He was concerned about potential future arguments that work had not been done properly, for example.

The City Attorney understood IT Corporation had not yet signed off on all the work. Mr. Kisela added that staff had also not validated that everything on the list was, in fact, owed. Commissioner Moore understood the risk, and he was not suggesting full payment to any subcontractor. He felt it was important for the City to step up and keep these businesses afloat because the entire community had worked so hard with respect to the Wingate Site.

Commissioner Katz understood and applauded Commissioner Moore's viewpoint, but she did not think the taxpayers would want their money put at risk. She felt efforts to assist the businesses as outlined by the City Attorney was the reasonable approach. Mayor Naugle agreed many of the City's taxpayers were also struggling to pay their bills.

Commissioner Moore felt the Commission was making an incorrect move. He asked Mr. Kisela if he had communicated with the bonding company. Mr. Kisela stated that the Cooperative Parties' Attorney had been in contact with Kemper within the last 24 hours, and he had represented that Kemper had pledged cooperation to expedite the issues.

Mayor Naugle asked if the bond ensured completion of the project or the payment of creditors. The City Attorney replied that it provided for both, in a sense. It particularly covered the subcontractors. He explained that the subcontractors would typically have lien rights against the private property owner, but the City was protected from those sorts of liens. As a replacement, performance and payment bonds were provided.

Mayor Naugle said that instead of relying on the Attorney, he felt the City should contact the bonding company to ensure everything was being done as quickly as possible. The City Attorney replied that he could confirm everything, but the Attorney was the City's Attorney, too, as part of the Cooperative Group. He explained that this Delaware firm would speak for the City and the others that were part of the Group. Commissioner Smith suggested that Commissioner Moore monitor the situation with the subcontractors.

Mayor Naugle thought the outcome might be different once the City was assured the money would be forthcoming from the bonding company. Commissioner Smith agreed the Commission would have a better idea of the situation in a few weeks. Commissioner Moore appreciated this special meeting, and he did not think the concerns were unreasonable. He hoped that small companies that would be vastly impacted in the short term would be assisted.

At 5:30 P.M., Mayor Naugle adjourned the meeting.

Jim Naugle
Mayor

ATTEST:

Lucy Masliah
City Clerk